A

REFUTATION,

&c.

[Price One Shilling and Sixpence.]

A

REFUTATION

Of a Pamphlet, entitled,

The Anſwer of PHILIP FRANCIS, Eſq.

TO THE

Charges exhibited againſt him, General CLAVERING, and Colonel MONSON, by Sir ELIJAH IMPEY, Knt.

When at the Bar of the Houſe of Commons, on his Defence to the Nundcomar Charge.

TO WHICH IS ADDED,

A FacSimile Copy of the Petition of NUNDCOMAR,

Burnt as a Libel by the Hands of the common Hangman, in Conſequence of a Motion of Mr. FRANCIS:

With the Proceedings relative to it in Council at CALCUTTA.

[By Sir Elijah Impey]

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MDCCLXXXVIII.

TO make *any* publication pending judicial proceedings, that may influence the minds of those who are to decide on them, or of the community at large, be it favourable or adverse to the party accused, is certainly censurable; but in an higher degree, when calculated to prejudice the person under accusation. It was hoped that a stop would have been put to such outrages on justice by the public prosecution ordered by the House of Commons, yet a pamphlet has since appeared of the same nature, calling itself a Speech of Mr. Francis, delivered on the 27th of February, 1788. From the solemnity of the introduction the public would be induced to believe it to be genuine, but it is well known that gentleman has disavowed it. Had he not, the futility of the reasoning, the falsehood of the assertions, and its not fulfilling the promise *of disclosing such scenes of iniquity, as would astonish and shock the House*, to which Mr. Francis had *most solemnly pledged himself*, gave it internal marks of spuriousness, which

 proved

proved it had no right to boaſt of being his legitimate offspring; but as the production, frivolous as it is, does not want malice, it is due to juſtice to detect its falſity for the purpoſe of obviating its effects.

It calls that part of Sir Elijah Impey's ſpeech, which is ſuppoſed to have given offence, a Charge brought againſt General Clavering, Colonel Monſon, and Mr. Francis; and then proceeds to ſtate what that charge was, laying the fault on Sir Elijah Impey in not having reduced his ſpeech to writing, if it is not ſtated fairly. In one particular, it is not only ſtated unfairly, but falſely: he did not mention the ſecret minutes of the Council, which were in contradiction to their public acts, as being made *before and after* the execution of Nundcomar; in fact, none exiſted *before*. The fair way of ſtating the caſe would have been, to have given the proceedings of the Council on the 14th and 16th of Auguſt, 1775, at large, together with the paper which was the ſubject of them; and then the minutes which were aſſerted to be contradictory to the public acts being thus confronted with them, every reader might on inſpection determine, whether ſuch contradictions did exiſt, without attending to arguments neceſſarily perplexing, when the materials, on which they are grounded, are withheld. Here are thoſe proceedings:

Extract

Extract of Bengal Secret Consultations, the 14th August, 1775.

"GENERAL CLAVERING—I beg leave to inform the Board, that, on the 4th of this month, a person came to my house, who called himself a servant of Nundcomar, who sent in an open paper to me; as I imagined that the paper might contain some request that I should take some steps to intercede for him, and being resolved not to make any application whatever in his favour, I left the paper on my table until the 6th, which was the day after his execution, when I ordered it to be translated by my interpreter. As it appears to me that this paper contains several circumstances which it may be proper for the Court of Directors, and his Majesty's Ministers, to be acquainted with, I have brought it with me here, and desire that the Board will instruct me what I have to do with it: the title of it is, "A Representation from Maha Rajah Nundcomar "to the General and Gentlemen of Council."

"Mr. Francis—As the General informs the Board, that the paper contains several circumstances which he thinks it may be proper for the Court of Directors, and his Majesty's Ministers, to be acquainted with, I would request that he lay it before the Board.

"Mr. Barwell—I really do not understand the tendency of this question, or by what authority the General thinks he may keep back or bring before the Board a paper addressed to them, or how this

address

addreſs came to be tranſlated for the particular information of the General before it was preſented here. If the General thinks himſelf authorized to ſuppreſs a paper addreſſed to the Gentlemen of Council, he is the only judge of that authority; for my part, I confeſs myſelf to be equally aſtoniſhed at the myſterious air with which this paper is brought before us, and the manner in which it came to the General's poſſeſſion, as likewiſe at the particular explanation of every part of it before it was brought to the Board. If the General has a particular commiſſion to retain this paper from the knowledge of thoſe to whom it is addreſſed, he alone is the proper judge how he ought to act: when the paper comes before me I ſhall judge of it.

"General Clavering—If Mr. Barwell will be pleaſed to recur to the introduction of my minute, he will obſerve that I mentioned having put the paper into the hands of my Perſian tranſlator; conſequently could not know the contents of it, or to whom it was addreſſed, till it was tranſlated. I brought it with me to the Council the firſt day which they met, after I knew its contents; but the Board not having gone that day into the ſecret department, I did not think it proper at that time to introduce it. Nobody can be anſwerable for the papers they may receive. All that I can ſay is, that this paper had the ſeal and ſignature of Rajah Nundcomar to it; and I bring it to the Board juſt in the form I received it, that is to ſay, open.

"Colonel Monſon—As this paper is ſaid to contain

tain circumſtances with which the Court of Directors, and his Majeſty's Miniſters, ſhould be acquainted, I think the General ſhould lay it before the Board.

" The Governor General—I do not underſtand this myſtery: If there can be a doubt whether the Paper be not already before the Board, by the terms of the General's firſt minute upon it, I do myſelf inſiſt that it be produced, if it be only to give me an opportunity of knowing the contents of an addreſs to the Superior Council of India, excluding the firſt member in the title of it, and conferring that title on General Clavering; and I give it as my opinion, that it ought to be produced.

" General Clavering—I am ſorry to obſerve, that the Governor General ſhould have miſtaken the title of this addreſs to the Board, by calling it an addreſs to me as Governor General, when the title of it had been ſo recently mentioned, by my ſaying it was addreſſed to the General and the Gentlemen of Council: which, in my opinion, does not expreſs, either by words or by inference, that ever that title is ſuch as the Governor General has mentioned. At all events, I am no more anſwerable for the title of the paper than I am for its contents.

" The Governor General—I did not ſay that the addreſs gave the General the title of Governor General, but meant only to imply that it conferred that title on him, by mentioning him particularly, and the reſt of the Council collectively.

" Reſolved,

"Resolved, That the paper delivered by the servant of Nundcomar to General Clavering be produced and read.

"The General is accordingly requested to produce it, and it is read.

N. B. This paper is ordered to be expunged from the Records, by a resolution of the Board taken at the subsequent consultation on the sixteenth instant.

Extract of Bengal Secret Consultations, the 16th August, 1775.

"THE Persian translator sends in a corrected translation of the petition of the late Maha Rajah Nundcomar, delivered in by General Clavering, and entered in consultation the 14th instant; in which the Board remark, that the address is made in the usual form to the Governor General and Council, and not as was understood from the first translation of it laid before the Board.

"The Governor General moves, That, as this petition contains expressions reflecting upon the characters of the Chief Justice and Judges of the Supreme Court, a copy of it may be sent to them.

"Mr. Francis—I think that our sending a copy of the Rajah Nundcomar's address to this Board to the Chief Justice and the Judges would be giving it much more weight than it deserves. I consider the insinuations contained in it against them, as wholly unsupported and of a libellous nature; and, if

if I am not irregular in this place, I would move, that orders ſhould be given to the Sheriff to cauſe the original to be burned publicly by the hands of the common hangman.

" Mr. Barwell—I have no objections to the paper being burned by the hands of the common hangman; but I would deliver it to the Judges, agreeable to the Governor's propoſition.

" Colonel Monſon—I differ with Mr. Barwell in opinion. I think this Board cannot communicate the letter to the Judges; if they did, I think they might be liable to a proſecution for a libel. The paper I deem to have a libellous tendency, and the aſſertions contained in it are unſupported. I agree with Mr. Francis in opinion, that the paper ſhould be burned, under the inſpection of the Sheriff, by the hands of the common hangman.

" General Clavering—I totally diſapprove of ſending to the Judges the paper, agreeably to the Governor General's propoſition, becauſe I think it might make the Members of the Board who ſent it liable to a proſecution; and therefore agree with Mr. Francis, that it ſhould be delivered to the Sheriff, to be burned by the hands of the common hangman.

" The Governor General—I ſhould have no objection to any act which ſhould publiſh to the world the ſenſe which this Board entertain of the paper in queſtion; but it does not appear to me that ſuch an effect will be produced by Mr. Francis's motion. The inhabitants of this ſettlement form but a very

ſmall

ſmall part of that collective body commonly underſtood by that expreſſion of The World. The petition itſelf ſtands upon our records, through which it will find its way to the Court of Directors, to his Majeſty's Miniſters, and in all probability will become public to the whole people of Britain. I do not, however, object to the motion of its being burnt.

"The Board do not agree to the Governor General's motion for ſending a copy of the addreſs of Maha Rajah Nundcomar to the Judges; but Reſolve, That orders be ſent to the Sheriffs, with the original letter, to cauſe it to be burned publicly, by the hands of the common hangman, in a proper place for that purpoſe, on Monday next, declaring it to be a libel.

Mr. Francis—I beg leave to obſerve, that by the ſame channel through which the Court of Directors, and his Majeſty's Miniſters, or the nation, might be informed of the contents of the paper in queſtion, they muſt alſo be informed of the reception it had met with, and the ſentence paſſed upon it by this Board; I therefore hope, by its being deſtroyed in the manner propoſed, will be ſufficient to clear the characters of the Judges, ſo far as they appear to be attacked in that paper; and, to prevent any poſſibility of the imputations indirectly thrown on the Judges from extending beyond this Board, I move, That the entry of the addreſs from Rajah Nundcomar, entered on our proceedings of Monday laſt, be expunged.

"Agreed, That it be expunged accordingly, and that the tranſlations be deſtroyed."

Here

Here is a fac ſimile copy of the paper which had been the ſubject of thoſe proceedings:

[The original tranſlation is printed in the common type; the words printed in Italics are inſerted in the original, in the hand-writing of Mr. Haſtings.]

To the Governor General and Council.

WITHIN theſe three ſoubahs of Bengal, Oriſſa, and Bahar, ~~from~~ the manner in which I *have* lived and the ~~character~~ *honor* and ~~reputation I enjoy.~~ *credit which I have poſſeſſed.* * For-

* Something is wanting here to complete the ſenſe.

merly, the Nazims of theſe ſoubahs ~~upon my good~~ *all* ~~name beſtowed ſome conſideration and regard,~~ *afforded attention and aid to my good name* and from the *preſence of the* king of Hindoſtan I ~~have a~~ *received a* munſib of five thouſand, and from the ~~firſt~~ *beginning* of the company's ~~government looking upon~~ *adminiſtration in conſideration of* my good wiſhes to the king, the gentlemen who ~~were in power here, and~~ *had the direction of the affairs of* ~~the preſent~~ *this place, and at this time the* governor, Mr. Haſtings, who is at the

did hold and do hold me in
head of affairs, ~~respected me, and do~~ respect ~~me.~~

did occasion any loss to *or*
~~I was~~ never disloyal ~~to~~ the state, ~~nor committed~~

of *proceed from me.*
~~any~~ oppression ~~upon~~ the Ryots. For the fault of

at this time a *true* *just*
representing ~~some~~ fact~~s~~ which I ~~just made known~~ ~~in a small degree~~

the redress relief
for the interest of the king, and ~~welfare~~ of the

I in a small degree made known
people, many English gentlemen have become my

enemies; and, having no other means to conceal

of the highest *my*
their own actions, deem*ing* ~~it highly politick~~ for

destruction of the utmost expediency *revived*
themselves ~~to make an end of me.~~ An old affair

formerly been
of Mohun Pursaud's ~~,~~ which has repeatedly ~~been~~

found to be
~~declared~~ false; and the governor, knowing Mohun

Pursaud to be a notorious liar, turned him out of

themselves
his house; ~~they have now revived,~~ and ~~granting~~

becoming his aiders and abettors and
~~him their aid and assistance, and joining with~~

Lord

Lord Impey, and the other juſtices, have tried me by the Engliſh laws, which are contrary to the cuſtoms of this country, in which there was never any ſuch adminiſtration of juſtice before; and taking the evidence of my enemies in proof of my crime, have condemned me to death. But, by my death, the king's juſtice will let the actions of no perſon remain concealed; and now that the hour of death approaches, I ſhall not, for the ſake of this world, be regardleſs of the next, but repreſent the truth to the gentlemen of the council. The forgery of the bond, of which I am accuſed, never proceeded from me. Many principal people of this country, who were acquainted with my honeſty, frequently requeſted of the judges to ſuſpend my execution till the king's pleaſure ſhould be known, but this they refuſed, and unjuſtly take away my life. For God ſake, gentlemen of the council, you who are juſt, and whoſe words are truth, let me not un-

dergo this injury, but wait the king's pleasure. If I am unjustly put to death, I will, with my family, demand justice in the next life. They put me to death out of enmity, and from partiality to the gentlemen who have betrayed their trust; and, in this case, the thread of life being cut, I, in my last moment, again request, that you, gentlemen, will write my case particularly to the just king of England. I suffer, but my innocence will certainly be made known to him.

These are copied from the evidence now before the House of Commons. The reasonings of Sir Elijah Impey on this subject are as follows:

"IT is not consistent with the high character which General Clavering has left behind him, that if he, in his conscience, thought there were circumstances in the case of Nundcomar, which ought to render him a proper object for mercy, he should have taken the resolution of not recommending him to mercy; much less that he should defeat the petition of the unhappy convict by retaining it until it could be of no possible use to him; and what makes

makes this obſervation ſtronger is, that the paper was no private addreſs to him only, but was an addreſs to the Board at large, whoſe ſenſe he would not *ſuffer* to be taken on the propriety of recommending him to mercy.

"And ſurely I do not go too far, when I aſſert, that, had the paper been produced to the Board before the execution of the criminal, both humanity and duty required, if the Council believed the facts alledged in that petition to be true, that they ſhould have uſed all lawful, I had almoſt ſaid, unlawful means, to procure a reſpite of his ſentence, inſtead of throwing an additional load of infamy on the memory of that unhappy man, for making this laſt effort for his life, buoyed up, as it appears in evidence he had been, to expect his enlargement, from the influence of the General and Colonel Monſon, even to the day before his execution, when he wrote this very petition, and ſent it to the General to be delivered to the Council for that purpoſe.

"Yet the General was at firſt inclined to think that this paper contained matter proper for the information of the Directors, and his Majeſty's Miniſters, for, on the 14th of Auguſt, he introduced it for that purpoſe; but, on reflection, and better information, like a man of honor, he retracted his opinion, and conſidered it as *a libel*.

"Mr. Monſon and Mr. Francis never thought it fit to be communicated to the Directors or the King's Miniſters, and General Clavering joined with Mr. Monſon in holding it of ſo dangerous a tendency, that he feared *even a communication of it to the judges*

judges might be deemed a criminal publication of it.

"Mr. Francis thought it would be giving it *more weight than it deſerved, if it was ſent to the judges, as he conſidered the inſinuations contained in it againſt them as WHOLLY unſupported, and of a libellous nature.* If that notoriety of the guilt of the judges exiſted *then*, or that conviction in conſequence of it, which is laid in the firſt Article; if that notoriety and that conviction extended to the majority of the Council, how was the paper unſupported *then?* And if unſupported then, what new matter has ariſen to ſupport it now? What makes that a juſt accuſation now, which was libellous then? The member who moved that it ſhould be burnt by the common hangman, added that by the ſame channel which conveyed it to England, information would be given of the reception it met with, and the ſentence paſſed upon it; and concluded by HOPING, that its being deſtroyed in the manner propoſed, *will be ſufficient to clear the characters of the judges*, and to prevent the POSSIBILITY of the imputations, indirectly thrown on the judges, from extending BEYOND THAT BOARD.

"That theſe were the real, and not oſtenſible reaſons held out on public grounds, to ſupport appearances, and to avoid flinging a ſtain on public juſtice, though they might privately think ill of the conduct of the judges, appears by theſe ſentiments being declared in a *ſecret department*; ſo that the reſolution could not fix a public ſtain to be noted in Calcutta.

"That the paper itſelf ſhould ſurvive, is hardly more

more providential for me, than that the gentleman who moved for the condemnation of it, and who expressed *his hopes* that it would prevent *any possibility* that the imputations indirectly thrown out against the judges *could extend beyond that Board*, is the surviving member of that majority.

"From him, who, to prevent its extending beyond that Board, had with so much sollicitude procured the paper to be expunged from the proceedings, I hope I may be thought to have some claim to expect that these imputations will not be encouraged in England; should, nevertheless, such imputations have been suggested by any member or members of the Council, (and, I am sorry to say, that their secret minutes shew that there have,) I am in the judgment of the House, whether it would not be a precedent of dangerous tendency to admit secret communications, and private informations in evidence, from any persons whomsoever, to disavow and contradict their own solemn, official, unanimous acts, entered on public records; on records required by act of parliament to be transmitted to his Majesty's Ministers, as authentic information, both of their acts and their reasons for their acts.

"I neither assume, nor pretend to any right to enquire into the propriety of obliterating any matter from records of so high a nature, which has been thought of sufficient importance to be entered upon them; but as the arguments refuting this paper remain on those records, and matter of the same import with that paper has found its way beyond that Board, and has extended to England, and even got into the reports of your Committees, I may be indulged

dulged in complaining (without giving offence) of the effect of that tenderness to the characters of the judges, which would not permit that paper to remain on the proceedings. Had it remained, the Directors and his Majesty's Ministers would have seen what were the particular topics which had been censured, and been thereby enabled to judge of the candour and propriety of reviving and propagating, by secret minutes, the very same accusations which they had publicly condemned as a libel. Had it remained on the record, those representations could never have been made."

These are extracted from a very accurate note of his speech taken at the time.

The secret minutes complained of and asserted to be contradictory to those proceedings are dated 21 March and 24 April 1775, 15 September 1775, 21 November 1775, and 21 March 1776. Taking them as there set out, whether they are or are not contradictory to these proceedings, is the only question. These are the minutes as there set out:

Minute of Mr. FRANCIS.

April 24, 1775.

"I beg leave to observe, that a prosecution for a conspiracy is now instituted, or is intended to be instituted, against Maha Rajah Nundcomar, and others; the tendency of which seems to me to be to prevent, or deter him from proceeding in making good those discoveries which he has laid before the

the Board; and I cannot but think that the East-India Company, and consequently this Board, have a very great concern in every step taken in that prosecution, whether it be actually begun, or intended."

Extract of a Minute of CLAVERING, MONSON, *and* FRANCIS.

Sept. 15, 1775.

"After the death of Nunducomar, the Governor, we believe, is well assured that no man, who regards his safety, will venture to stand forth as his accuser.

"On a subject of this delicate nature, it becomes us to leave every honest man to his own reflection. It ought to be made known, however, to the English nation, that the forgery, of which the Rajah was accused, must have been committed several years; that in the interim he had been protected and employed by Mr. Hastings; that his son was appointed to one of the first offices in the Nabob's houshold, with a salary of one lack of rupees; that the accusation, which ended in his destruction, was not produced till he came forward, and brought a specifick charge against the Governor-General, of corruption in his office."

Ditto, dated Nov. 21, 1775.

"It seems probable, such embezzlements may have been universally practised. In the present circumstance, it will be difficult, if not impracticable, to obtain direct proofs of the facts. The terror

 impressed

impreſſed on the minds of the natives, by the execution of Maha Rajah Nunducomar, is not to be effaced; for though he ſuffered for the crime of forgery, yet the natives conceive he was executed for having dared to prefer complaints againſt the Governor General.

"This idea, however deſtitute of foundation, is prevalent amongſt the natives, and will naturally deter them from making diſcoveries, which may be attended with the ſame fatal conſequences to themſelves.

"Puniſhment is uſually intended as an example, to prevent the commiſſion of crimes; in this inſtance, we fear, it has ſerved to prevent the diſcovery of them."

Ditto, March 21, 1776.

"Some of the facts, with which he (Mr. Haſtings) has been perſonally charged, have been proved. The preſumptive evidence, in ſupport of the reſt, will, we apprehend, loſe none of its force, by the precipitate removal of Maha Rajah Nunducomar."

Extract of a Minute of Mr. FRANCIS.

March 21, 1775.

"The Governor General, who had long expected the appearance of ſuch a letter, and was appriſed of the contents of it, made no objection, however, to its being received and read at the Board. When the man, who advances a ſpecific charge, declares himſelf ready to come forward

and

and ſupport it, and to hazard the conſequences of failing in his proofs, it may ſtill be preſumed that the charge is falſe; but it does not partake of the nature of a libel. A libeller advances charges, which he does not in the end, or is unable to make good:—when called upon to appear and produce his evidence, he ſhelters himſelf, ſometimes in the obſcurity, ſometimes in the ſuperiority of his ſituation, and leaves the accuſation without an accuſer, to operate as far as it can, in the opinions of men, againſt the honour and reputation of the party accuſed. Rajah Nunducomar is not an obſcure perſon in the country, nor does he in this inſtance act the part of a libeller. He is himſelf of very high rank; he publickly accuſes the Governor General of miſconduct in his office, and deſires to be heard in perſon in ſupport of his charge."

It had been aſſumed as a ground of proof to eſtabliſh the firſt charge againſt Sir Elijah Impey, that the majority of the Council in Bengal were of opinion, that the Judges had been guilty of notorious injuſtice in the caſe of Nundcomar: to prove that they were of a contrary opinion, and for that purpoſe *only*, the conſultations and papers were introduced; to that purpoſe *only* the reaſonings are directed. Whether this be a *wanton* attack, or whether the caſe be ſuch that an attack can be the *only* defence, they who have read the evidence produced in ſupport of the firſt article, even without the aid of Sir Elijah Impey's ſpeech, are enabled to determine.

Mr. Francis is made to ſay, in ſpeaking of what is called *his* defence, "That defence and accuſation in *that* particular caſe may be inſeparable." It is preciſely the very caſe with reſpect to this part of Sir Elijah Impey's defence: they are ſo intimately united, that the imputable matter, which is conſidered as the attack, cannot be ſuppreſſed, if the written documents of the Council are *ſimply read*; it ariſes ſolely and immediately from a compariſon of the proceedings with the ſubſequent minutes, by neceſſary conſequence, without the aſſiſtance of argument. If the imputation is to be kept back, the defence muſt be deſerted. It is *not true* that it is ſo in the particular caſe of Mr. Francis: all he has to do is, to ſhew that the minutes do not contradict the proceedings. Having done that, his defence is complete without making any attack; and, unleſs he ſhews that, he fails; his illiberal invectives can furniſh no argument to that point.

The ingenuity of the pamphleteer aſſiſts him to exonerate himſelf from the imputation, firſt, by an attempt to impeach the authenticity of the paper produced; 2dly, by reconciling the ſentence paſſed on the paper as a libel with the minutes aſſerted to be in direct oppoſition to ſuch an idea; and, 3dly, by diſavowing that its being a libel was the true motive for the acts of the Council, and ſubſtituting reaſons for them of a totally different nature. It will be

no

no difficult taſk to eſtabliſh the authenticity of the paper from the evidence contained in the pamphlet, and much more eaſy to prove, that it is morally impoſſible that the ſubſtituted reaſons have been truly aſſigned.

By the fac ſimile copy of the paper it will appear, that the parts corrected in the handwriting of Mr. Haſtings are not ſo obliterated in the original as not to be legible, by which all poſſibility of ſuſpicion that the ſenſe is altered muſt be done away; yet the following captious obſervations could not be reſtrained: "Mr. Haſtings even *altered* the tranſlation of it in many parts with his own hand; who will ſay that a paper ſo *altered*, and ſo produced, deſerves any credit?" In another place, "Of the authenticity you can have no proof." With all this apparent inclination he does not venture to deny the authenticity. It would have been authenticated on its production, had not the preſent ſituation of Mr. Haſtings rendered it indelicate to have called him as a witneſs before the Houſe; but had its authenticity been daringly denied, Mr. Haſtings, who kept himſelf in readineſs, would voluntarily have attended.

After this feeble attempt to invalidate it, Mr. Francis is made to ſpeak thus: "The "original paper, I have no doubt, contained "in-

" insinuations against the Judges." No one who reads the proceedings could doubt that; what they were is material to be known. The nature of his argument forces him to admit what they were: he is made to say, " It " charged the Judges with having murdered " Nundcomar for accusing Mr. Hastings, or " to that effect."

If it was to that effect, whether the specific paper produced be authentic or not, is become immaterial; for every consequence follows with equal force from the petition, which is admitted: but the authenticity of the identical paper is unwarily admitted in the surprize and confusion that the unexpected appearance of it occasioned. He says, " I never had a " doubt that all the translations of it were " destroyed, till Sir Elijah Impey produced " a copy of it at the bar of the house." Sir Elijah Impey *did*, therefore, produce a *copy* of it.

The condemnation of the libel, in order to reconcile it with the minutes, is endeavoured to be accounted for, " because it came with- " out a responsible accuser, without a witness " to support it, the fabrication of a man " publickly executed for a crime, and conse- " quently no longer capable of proving his " allegation; that being the case, it was

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" what he called a libel, and nothing elſe: " he called it ſo then, he calls it ſo ſtill, " though he was not then, nor is now con- " vinced that the ſubſtance of it is untrue." No law book furniſhed this definition of a libel. Does that which is lawful and true become falſe and libellous by defect of proof? Can he who thinks, who knows it to be true, condemn it as a libel? If they did not think, if they did not know it to be true, the majority of the Council ſhould not have adopted it in their minutes. The argument, that it cannot be ſupported now, if it could not be ſupported at the time of its being laid before the Council, is ſo forcibly put in the reaſoning of Sir Elijah above cited, that no further obſervation on it is neceſſary.

But he gives another reaſon why he was juſtified in calling it a libel. " It included *all* " the Judges, concerning two of whom (Mr. " Juſtice Hyde, and Sir Robert Chambers) " they never had any ſuſpicion of corrupt mo- " tives, and concerning another of whom " (Mr. Juſtice le Maitre) they had then no " ground of ſuſpicion, except his intimacy " with Sir Elijah Impey, his acting on all oc- " caſions as his inſtrument, and the notorious " violence of his deportment: they, therefore, " treated it as a libel againſt a whole Court of " Juſtice ought to be treated."

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It was then a libel, becauſe it imputed guilt to all the Judges collectively, and did not diſtinguiſh them from Sir Elijah Impey, to whom alone the whole guilt was to be imputed. Every publication, therefore, which attributes the guilt to them collectively, and not to Sir Elijah Impey, *is a libel.* This is ſaid to be "no new diſtinction by Mr. Francis, no after-"thought, no ex poſt facto vindication."

The queſtion, as ſtated for Mr. Francis, is put thus: "The queſtion is, whether by thoſe "declarations (the declarations at the time of "condemning the paper), he contradict many "others, in which he has charged the proſe-"cution and execution of Nundcomar on "Sir Elijah Impey, as a political meaſure of "the moſt atrocious kind?"

By this muſt be underſtood the many declarations in which he has charged this on Sir Elijah ſingly; for it is admitted by him, that to make that charge on all the Judges collectively is a libel.

To ſupport this poſition, ſeveral minutes are produced. This is ſaid to be his (Mr. Francis's) defence againſt the charge, as it affects the Council collectively.

The minutes cited for this purpoſe are from the

the ſecret conſultations of theſe dates, March 21, 1775, April 24, 1775, September 15, 1775, November 21, 1775, March 21, 1776. Thoſe of the 21ſt of March, 1775, and 24th of April, 1775, caſt no imputation whatever on the Court or Sir Elijah Impey; they are, indeed, before any proceedings were commenced againſt Nundcomar: the other minutes are directed againſt the whole court, againſt the judges collectively; not one of them diſcriminates the conduct of Sir Elijah Impey from that of the other judges by the moſt diſtant alluſion; not one of them has the leaſt tendency to exculpate any of the judges. Theſe, therefore, by the admiſſion of Mr. Francis himſelf, are *libels*. The writing of thoſe minutes is abſolutely irreconcileable with the idea of condemning Nundcomar's petition as a libel, *becauſe it included all the judges*, for the minutes themſelves equally *include them all:* theſe muſt be libels, if that was, and *they* ought to be treated (to uſe Mr. Francis's words) "as a libel againſt a whole court of juſtice ought to be treated." It does not yet appear to be true from any thing that has been ſaid or publiſhed, that Mr. Francis ever *did* charge Sir Elijah Impey ſingly; it at preſent, therefore, carries every ſuſpicion of being what it is denied to be, "a new diſtinction, an afterthought, an ex poſt facto vindication."

Can Mr. Francis ſay, that before this paper was produced at the bar of the Houſe of Commons, he had ever revealed the contents of it to his moſt confidential friends? Can he ſay, that he ever before made *this* defence? The manner in which the attention of the public has been called to this ſubject makes it now highly incumbent on him to produce *one* minute, *one declaration* at leaſt, in which he has charged Sir Elijah Impey *ſingly*, as is aſſerted, with "this political meaſure of the moſt atrocious kind." It is the act of a friend to adviſe him to do it; his friends and the public expect it. He is in time yet to urge it againſt Sir Elijah Impey; no deciſion has yet paſt on the firſt article. He would not have aſſerted it, if he could not do it, and he will not ſhrink from it. Let him produce *one*.

It will be an extraordinary caſe, indeed, if one judge was able to execute ſo atrocious a meaſure, two of the other judges being admitted to be under no ſuſpicion of corrupt motives, and the third only ſuſpected from being intimate with the corrupt judge, from acting as his inſtrument on all occaſions, and from the notorious violence of his temper.

The latter are bold aſſertions againſt a judge who is no more, and not to be expected from the mouth of him who profeſſes to be

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ſo tender of the ſame of his deceaſed friends, from the man who had claimed favor and indulgence to one of them, " as due to a perſon " of high character, to a perſon who is not " here, who is not only abſent, but dead, and " who died in the ſervice of his country." To this indulgence, and on the ſame account, Mr. Juſtice le Maitre was equally entitled with that gentleman, for whom it was claimed: this wanton and indecent attack might ſure have been ſpared againſt a man anſwering to the ſame deſcription. Mr. Juſtice le Maitre left behind him a widow, a ſon, daughters, relations and friends, who may feel as keenly for an injury done to his memory, though perhaps not with the ſame public oſtentation, as Mr. Francis may for that of the perſons with whom he has been connected. His living in a particular intimacy with Sir Elijah Impey has been poſitively and pointedly negatived before the Committee by one witneſs: his clerk was alſo before them, and might have been examined to the ſame point; he could have informed them with *whom* the *midnight ſocial hours* of that gentleman were ſpent. What is meant by the dark innuendo, where it is ſaid, " Of him we had *then* no other ground " of ſuſpicion," is not explained; the friends of Mr. Juſtice le Maitre have a right to an explanation of it.

Mr. Juſtice le Maitre was ſo far from being the inſtrument of Sir Elijah Impey, that his opinions with regard to the juriſdiction of the Supreme Court differed materially from thoſe of Sir Elijah: he was an honeſt and a warm man; he was not contented with oppoſing Sir Elijah Impey on the bench, which he thought his duty required, but proteſted againſt his conduct in a public letter. That he openly oppoſed Sir Elijah Impey in many inſtances, in which the Eaſt India Company and the Council were materially concerned, and that the opinion of Sir Elijah was in thoſe caſes prevalent by virtue of the caſting voice given to him as the Chief Juſtice, (being aided by Sir Robert Chambers only,) muſt be within the knowledge of Mr. Francis: will he ſay, he did not know this to be the caſe, when a mandamus was applied for to reſtore Mr. Stewart to the office of Secretary to the Council, in the action brought by Cummaul O'Deen againſt the Calcutta Committee, and in the inſtance of the rule formed by the Court to ſupport the right of the Company to detain priſoners on account of revenue? If he does remember thoſe oppoſitions by Mr. Juſtice le Maitre, ought he to have been made to ſay that Mr. Juſtice le Maitre *acted on all occaſions* as the inſtrument of Sir Elijah Impey.

But Mr. Francis's character is treated with

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ſtill greater freedom by this author, who makes him declare with the moſt complete ſang froid, "That he did not heſitate to declare in the moſt explicit manner, that the *private motive* of his ſtanding ſo forward as he did, for the deſtruction of the copy and tranſlations of the petition, ſent by Nundcomar previous to his execution to General Clavering, was not the public one aſſigned." Does he eſteem it a trifling matter to put falſe reaſons on a record, which the Parliament has required to be laid before the king's miniſters, as official authentic intelligence of the acts of the Council, and the ſpecial reaſons of thoſe acts? After ſuch an avowal, who is to diſtinguiſh on the public records of the Company, what are his true reaſons, from thoſe, which he may afterwards, "in the moſt ſolemn and explicit manner," "on his honor," and "on his oath," "not heſitate," when preſſed, "to declare not his true reaſons," "but that he was really actuated by ſome *private* motive?" What a door does this open againſt him? What *private motives of ambition and vengeance*, after ſuch a declaration, had it been advanced by himſelf, might not thoſe, who are not inclined to think well of him, aſſign for many public acts, of which he has himſelf, perhaps, given the true and honeſt reaſons?

Let us now ſuppoſe the reaſons aſſigned on the

the record to have been only oſtenſible; let them be expunged, and every memorial of them be deſtroyed; let the true operative motive be ſubſtituted in their place. "It was his fear for the ſafety of General Clavering, Colonel Monſon and he obſerving that the judges had gone all lengths, that they had dipped their hands in blood for a political purpoſe, and that they might again proceed on the ſame principle." This was a reaſon totally incompatible with that aſſigned for condemning the paper as a libel: this was an unequivocal accuſation of all the judges collectively, and of the whole Court, not of Sir Elijah Impey ſeparately. The judges, not Sir Elijah Impey, had gone all lengths, for they, not Sir Elijah Impey only, had dipped their hands in blood for a political purpoſe, and the fear was, that they, not he only, might again proceed on the ſame principle, and commit another legal murder on the perſon of General Clavering. What is become of their want of ſuſpicion of Sir Robert Chambers and Mr. Juſtice Hyde now? Was all this fear for the ſafety of General Clavering on account of Sir Elijah Impey alone? Mr. Juſtice le Maitre was then ſuſpected only from his intimacy with Sir Elijah Impey: was it thought, that he was ſo much an inſtrument of Sir Elijah, as to have aided him in inflicting a capital puniſhment on the General? And for what? For what was eſteemed publiſhing of a libel.

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"What he (General Clavering) had done was "in truth a most rash and inconsiderate "action, namely, the bringing the petition at "all before the Board; the man was dead and "General Clavering made himself the *publisher of the libel*; he put himself in the "power of his enemies, who infallibly would "ruin him." This, let it operate as it may, Mr. Francis declares, "on his honor, and that "he shall, if necessary, on his oath, was a "strong concurrent motive with Colonel "Monson and him for getting the paper de-"stroyed." In the same page it is said to be, not the concurrent, but "the sole motive."

Had this been the reason on record, would even the names of General Clavering and Colonel Monson, (so continually insisted on by Mr. Francis as props to his reputation,) added to his own name, have procured credit to it from one man in England, let him be ever so much addicted to party? It was impossible that they should be ignorant, that the publication of a libel, the supposed offence for which it was feared the judges would again go all lengths, and would again dip their hands in blood for a political purpose, could by no strained construction of any law be made a capital offence. Did they fear, that the General might be committed "to the common gaol of Calcutta, so miserable and so horrid a place, that

that the bare commitment to it was equal to death?" They must have known that in England it was a bailable offence. They knew the special protection which the charter gave them; "that the person or persons of the Governor General or any of the Council shall not, nor shall any of them respectively, be subject or liable to be arrested or imprisoned upon any action, suit, or proceeding in the said Court, except in cases of treason or felony; nor shall the said Court be competent to hear, try, or determine any indictment or information against the said Governor General or any of the said Council for the time being for any offence, not being treason or felony, which the said Governor General or any of the said Council shall or may be charged with having committed in Bengal, Bahar, and Orissa, any thing herein contained to the contrary notwithstanding." Was it expected to be believed that the majority of the Council, with the whole executive power in their hands, would be so tame and submissive to a Court of Justice, as to suffer the General to be punished in any manner enormous and outrageous? Could fears arising from the expectation of such impossible acts be assigned on the record as causes for condemning the paper and destroying the memorial of it? If such causes entered on record would not have gained credit, they surely do not come with greater authority from the oral testimony of Mr. Francis alone,

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even with the addition of *his oath*, and of *his honor*, to ſanctify them: no man's oath can be received in any Court of Juſtice to falſify a record, much leſs to falſify his own act recorded ſolemnly by himſelf. What would have been the indignation of the majority of the Council, if Sir Elijah Impey had attempted to falſify their reaſons ſolemnly entered on record? Let us hear, what they themſelves ſay on a ſimilar occaſion in a minute of the 15th September, 1775: "As to the diſmiſſion of Mr. Playdell, we have *aſſigned* our reaſons, and diſclaim any *right* in Mr. Haſtings to attribute our conduct to other motives." What *right* has Mr. Francis *to attribute their conduct to other motives than what they have aſſigned*; and to throw ſo groſs an imputation on the memory of his deceaſed friends, as that of having recorded themſelves *liars?* Can common ſenſe endure that his teſtimony ſhould be received to prove, that the panic operating on the minds of him and Colonel Monſon had force ſufficient to induce them to condemn a paper as a libel, which in their conſciences they then thought true, and which Mr. Francis ſtill thinks true, and to add a ſtigma to the memory of a man, whom they knew to be falſely condemned to death, becauſe he had juſtly remonſtrated againſt the iniquity of his ſentence?

Was this a cauſe that could produce ſuch

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effects? Was this a fear, qui cadere poteſt in virum conſtantem? The aſſigning of ſuch a fear as a motive, had thoſe gentlemen been alive, might have been the cauſe of more real danger to Mr. Francis, than the ſuppoſed publication of the libel could have been to the General. Would either of thoſe gentlemen have borne, that ſuch a defence ſhould be ſet up for him with impunity? Would that brave man, whom Mr. Francis repreſents as dying in the ſervice of his country, "not in an honorable but an odious ſervice, not in the field of battle, where his gallant mind would have led him, but in an odious unprofitable conteſt," would he have ſuffered himſelf to be protected from ſuch a danger in ſuch a manner? Would the Colonel have borne to hear ſuch a concurrent motive aſſigned to himſelf? Would he have thought it honorable to the General to have falſified the record for his protection againſt ſuch a fictitious danger? If their fears were ſo predominant on the 16th of Auguſt as to produce theſe extravagant effects, how came they ſo far diſſipated, that the ſame perſons ſhould, on the 15th of September following, adopt in their own name what through fear only they had condemned in the petition of the convict? If it was dangerous on the 16th of Auguſt, why was it leſs ſo on the 15th of September? Their fears in Auguſt were, that they were betrayed by a member of their

Council

Council to Sir Elijah; had that ſuſpicion ceaſed in September?

An argument is attempted to prove that the minutes and the reaſonings on the proceedings are not contradictory, becauſe it would be an act of folly, if they were ſo, to enter them on the ſame record. The pamphlet ſays, "At firſt ſight it is not very likely, that they, or any men, not abſolutely idiots, ſhould enter ſuch contradictions on the ſame record, and place themſelves in a point of view before the Directors, which muſt utterly annihilate their confidence in them."

Had it been true that the entries on the record were ſuch as to *ſhew* the contradictions, the abſurdity of ſo doing would not have rendered them leſs contradictory; but, in fact, there was no time when they *had* entered that on the record which made any contradiction.

Before the condemnation of the paper, there had been no imputation caſt on the Court by any minutes of the Council; the paper, therefore, itſelf, and the reaſons for condemning it and exculpating the judges, when entered on the record, encountered nothing that was contradictory to them. At the time when the minutes, which revive the charges in the condemned paper, were entered, the paper itſelf,

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and all the translations, were destroyed, and the reasons thereby rendered unintelligible; there were still no contradictions entered on the record; it was not till Sir Elijah Impey, by restoring the paper to its place, had shewn that the subject matter condemned was *the very same matter which had been insisted on in the subsequent minutes*, that the contradictions made their *first* appearance.

On the proceedings transmitted to the India House, and in the printed abstracts from them, no contradiction appears at the present time; the Council were not in the state of idiocy supposed in the pamphlet. Had the paper all along stood on the record, had it been published in those abstracts, so that the King's Ministers and the public could have compared what had been condemned with what was subsequently insinuated, the observation made for Mr. Francis would have been true, but whether to the full extent of the sentence passed on the majority of the Council by the pamphlet, viz. "that they would be placed before the Directors in that point of view which must have utterly annihilated their confidence in them," is not for an individual to determine: but should that be the true point of view, the consequences would be of greater extent; for the same cause, which goes to the annihilation of the confidence of the Directors, ex-

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tends to the annihilation of the confidence of the King's Miniſters, and of every man of common honor and probity throughout the whole nation.

Either the reaſons which were entered at the time muſt be true, and the contradictions conſequently admitted, or ſome reaſon not repugnant to common ſenſe, and at the ſame time conſiſtent with the minutes, muſt be aſſigned for entering them, expunging the paper, and deſtroying all the tranſlations: if no other is aſſigned, let *this* ſtand till a better is produced, to which only it ought to give way; let it be ſuppoſed, till ſome better reaſon makes its appearance, that it was in the contemplation of the gentlemen at ſome future time, to advance the very ſame ideas which they had condemned in the paper, not as a charge which they knew they could not ſupport, but as inſinuations, which, being ſent ſecretly, they knew could not be refuted: it certainly then became an act of prudence, which would ſuggeſt itſelf to a man of much leſs quickneſs of parts than Mr. Francis, to deſtroy every memorial of the paper, that it might not riſe in judgment againſt them, and condemn them to that point of view in which it has been truly ſaid none but idiots would place themſelves. Though the pamphlet deſerves not the leaſt credit in any other part, yet the fulleſt aſſent

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muſt be given to it where it makes this declaration in the name of Mr. Francis, "That he never had a doubt but all the tranſlations of it were deſtroyed, until Sir Elijah Impey produced a copy of it at the bar of the Houſe." He certainly, notwithſtanding his ſuſpicions of being betrayed, had no doubt but all the tranſlations were deſtroyed; it was in full confidence that they were, that he ventured to enter the minutes in the record: had the paper remained, thoſe minutes would never have exiſted: he was not apprehenſive of being placed "in that point of view" which the prudent meaſure of expunging the paper, and deſtroying the tranſlations, if completely executed, would have removed to an infinite diſtance.

But it may be naturally aſked, Why thoſe reaſons were at all put on the conſultations? To which the anſwer is not difficult: it was, perhaps, nearly as diſagreeable to Mr. Francis to be compelled "to bear teſtimony to the good conduct, or to make declarations in favor of Sir Elijah Impey," as "to be compelled to anſwer" for ſo doing; but it was not optional. "What General Clavering did was in truth a moſt raſh and inconſiderate action, namely, the bringing the petition at all before the Board." Whether it was the duty of the General to bring before the Board a petition directed formally, as this was, to the Board, this is not the

the place to diſcuſs. Had it at any rate been ſuppreſſed, thoſe declarations in favor of the judges would have been avoided; as it was brought before the Board, it muſt be diſpoſed of: this compelled him to ſpeak the truth; for in oppoſition to the knowledge and ſenſe of all the communities which compoſe the people of Calcutta, publickly and unanimouſly declared, they could not, as was firſt propoſed by General Clavering, adopt the charges contained in the paper and tranſmit them as matter fit for the information of the Directors and his Majeſty's Miniſters: had they done an act of ſuch notorious injuſtice, they muſt have ſubjected themſelves to execration on the ſpot, and refutation from the concurrent teſtimony of the whole ſettlement, where the iniquity of the action would have been known to be outrageous.

The Council in the end did what juſtice required; they treated it as a libel, and entered true reaſons for their ſo treating it as well as for expunging it and deſtroying all memorials of it. If the queſtion be put, Why did they afterwards enter minutes in the ſame record contradictory to thoſe reaſons? In the anſwer which is attempted, that moſt difficult of all taſks has been boldly undertaken, namely, the reconciliation of abſolute contradictions. This, as all ſuch undertakings muſt do, has failed in the

the execution. From the ability of him, who chose such ground, it is fair to conclude that no better could be taken.

It might be asked, What was the real cause for such anxiety that the contents of the paper should not be known? Why, when it was burnt by the hands of the common hangman, it should be sealed up? The effect of the execution of the sentence was thereby destroyed; the publick neither knew who was the author against whom it was a libel, or why it was censurable. Many other questions might be asked not easy to be fairly resolved. If, as they wrote on the 15th of September, 1775, there was such criminal matter as ought to be made known to the English nation, was it proper that it should be made known by the inquisitorial channel of a secret minute? Why was it not made known by open, bold accusation? Why was it put in the form of insinuation, and not of a direct charge.

Why were the Judges to be arraigned and condemned by the public in England, when they were absent and ignorant that any charge was preferred against them? Did they wish them to be condemned unheard? Did they fear that giving them an opportunity to make their defence, would render it certain that they would prove their innocence? But though his

his aſſertions are not ſufficient to reconcile contradictions, the author will reconcile them from the evidence brought by Sir Elijah Impey himſelf; for "it ſhall be proved beyond a doubt, that he himſelf never had, before his defence at the bar of the Houſe, put that conſtruction on the act of burning the petition, which he has lately endeavoured to fix upon it." This evidence is a letter written to the Secretary of State in January, 1776, complaining of the minutes of the majority in Council: he does not make this act of the Council part of his defence; and his not doing ſo "warrants a concluſion the moſt irreſiſtible, that he had not the moſt diſtant idea, that their act on which he now inſiſts could bear the conſtruction which he now puts upon it."

Was he then in poſſeſſion of the paper? He had it not till long after the tranſaction itſelf, for it appears that he applied for it to the Council on the 28th of Auguſt; the letter of the Council refuſing it was of the 11th of September: when Mr. Haſtings delivered it, is uncertain. As there can be no doubt that it would have been material to mention it in that letter, it would be natural to conclude from his omitting it, that Sir Elijah was then ignorant of its contents, unleſs he had ſagacity enough to foreſee that a ſtill better uſe might be made of it by waiting till thoſe, who then

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dealt in insinuations only, might become bold enough to convert them into a publick charge.

But granting the argument in its fullest extent, admitting that Sir Elijah was in possession of the paper, and did not think the proceedings would bear that construction which he now puts upon them at the bar; admit it to have occurred then to him for the first time. Here is the paper, here are the proceedings; do they or do they not warrant the construction now put upon them? Can any other be put on them? It is said, "that was his time, if ever, to avail himself of their evidence against themselves." By having slipt that opportunity, he cannot have injured a defence founded on immutable reason. If the reasoning was true then, it is true now, and must for ever remain so. Neither the dulness, folly, or remissness of Sir Elijah can ever make it otherwise. It cannot be argued that Mr. Francis did not condemn the paper as a libel, that he did not propose the expunging it and the destroying of all the translations of it, that he did not profess to hope it would not prejudice the judges, and that it would not find its way beyond the limits of the Board; it cannot be argued, that, after all this, he did not join in the minutes; all these facts cannot be denied, because Sir Elijah Impey wrote the letter of the 20th January, 1776, without mentioning them. These facts

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muſt remain, and by them the conſtruction is warranted.

There is one aſſertion of a ſerious nature, indeed, if it has truth and ſound reaſoning for its foundation. It is aſſerted that the paper "muſt have been obtained by means the moſt unjuſtifiable:" "by means which prove that they (the Council) were betrayed to Sir Elijah Impey by one of the members of their Board;" "which prove to demonſtration a colluſion and confederacy between him and Mr. Haſtings from the beginning." This is "conceived to be convincing to every *candid* man."

Before the communication of this paper is admitted to be damning proof, let us ſee what was communicated, and what was the occaſion of the communication. The majority of the Council had, by groſs inſinuation on their ſecret minutes, accuſed both Mr. Haſtings and the judges of a combination to take away the life of his accuſer, and thus to defeat accuſations which had been brought againſt him. If Mr. Haſtings had not been joined in the ſame charge, ought he, as a man of honor, to have refrained from informing Sir Elijah and the judges of that unjuſt attack? Which was the diſhonorable part of the buſineſs, the making theſe inſinuations, as far as they reſpected the judges, matter of

their ſecret conſultations, and by that means tranſmitting them to England, or the communicating them to the judges for the purpoſe of their repelling the injury? Mr. Haſtings being in poſſeſſion of this paper, which was a complete refutation by the Council themſelves of the inſinuations by them thus diſpatched to Europe, would Mr. Haſtings have done more than common juſtice by putting it into the hands of one of the judges? But Mr. Haſtings himſelf was perſonally intereſted in the vindication of the judges. He was charged as a confederate with them; he was become a joint defendant; it was neceſſary to him that the defence ſhould be joint; they could not be guilty without his being involved in the ſame crime; the act which enabled the judges to defend themſelves, was, as done by Mr. Haſtings, in the nature of ſelf-defence—That was the cauſe of the communication of the paper; and the paper itſelf was put into Sir Elijah Impey's hands, as much for the purpoſe of defending himſelf, as for the defence of Sir Elijah and the other judges.—The Council were *betrayed* to Sir Elijah Impey, becauſe Mr. Haſtings put it in the power of the judges to defeat their ſecret attack, becauſe he did not confederate and conſpire with thoſe who accuſed, to diſarm the judges from making a defence as neceſſary to his own ſafety and honor,

nor, as it was to that of the judges. This was the criminal intercourſe; this was the inſtance in which they ſuſpected themſelves to be betrayed. This intercourſe, this communication, did not exiſt till theſe minutes made it neceſſary for the mutual defence of all the parties who had been calumniated; no ſuch communication was ever carried on but on that occaſion: no ſuch had been at the time the paper was condemned; it is an ex poſt facto vindication that ſuggeſts it.

The point of honor, on this ſubject, is carried for Mr. Francis to a moſt extravagant pitch; theſe are the words that are given him in ſpeaking of the communication of the paper: "Even if there had been no oath, Mr. Haſtings was bound by his own agreement; in my breaſt I hold *ſuch an agreement* to be equally binding as an oath." If there had been ſuch agreement, was it not virtually, was it not completely cancelled, when the very matter which was condemned in the paper, had been made matter of accuſation againſt Mr. Haſtings. Had not the majority of the Council equally agreed that the paper ſhould be conſidered as a libel? Had not Mr. Francis (who firſt denominated it ſo more ſpecifically) agreed to eſteem it ſo? Was not he, who had been the firſt mover in deſtroying all memo-

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rials of it, more particularly bound in honor, if not by his oath, after he thought all memorials actually deſtroyed, not to have ſet up that matter, which he had agreed with the Council to conſider as falſe and libellous, as a true accuſation againſt Mr. Haſtings? Who was guilty of the firſt breach of faith, if Mr. Haſtings can be ſuppoſed to have been ever bound by an agreement? Was it binding on one ſide and not on the other? Could any point of honor oblige him to ſubmit to the conſequence of ſo foul an accuſation, without making uſe of the means of defence which were in his own hands? It would have been a moſt refined ſtroke of policy to have cajoled Mr. Haſtings into ſuch an agreement, and ſuch a conſtruction of the point of honor.

With regard to the refuſal to apply to the judges for a reſpite, it is only neceſſary to obſerve, that all the applications of the Council which met with any oppoſition from the Court, were acts of direct interference with the province of the judges, and pending the proceedings before the trial.

They could not poſſibly be conſidered as reaſons for not laying ſuch a caſe before the judges as they might think reaſonable cauſe to reſpite the ſentence. The Court appears very properly to have reſiſted the receiving letters

letters and meſſages concerning matters in ſuit before the Court; it did not therefore follow, that applications, private or public, might not be made to the judges, collectively or individually, for the purpoſe of a recommendation to mercy. The pamphleteer has been guilty of a moſt groſs miſrepreſentation, by applying an anſwer of the Court to a ſubject different from that to which it was given:

"On the 27th of June we ſent to the Judges an application from the Nabob of Bengal, in favour of Nundcomar; to which the following is the anſwer of the Judges ſent by meſſage, June 25, 1775.

"That the Court is of opinion, that all claims of individuals ought to be made directly to the Court by the individuals, and not by the authority of the Governor General and Council.

"That it is contrary to the principles of the Engliſh conſtitution, for any perſon or perſons to addreſs a Court of Juſtice by letters miſſive, concerning any matter pending before ſuch Court, and that the higher the ſtation of the perſon or perſons ſo addreſſing, the act is the more unconſtitutional."

That anſwer was not given, as is ſtated in the pamphlet, to any application made in favor of Nundcomar; it was a frivolous claim to the right of an ambaſſador, to which Lord Aſhburton, as appeared by Sir Elijah Impey's defence,

defence, properly blames the judges for having paid too much attention.

No application was made in favor of Nundcomar by the Council after his conviction—the former applications were never assigned as reasons for not making them by any of the Council.

Had a wanton attack been made on the memory of General Clavering and Colonel Monson, it would have been mean, illiberal, and unmanly; but Sir Elijah Impey was under no such personal obligations to those gentlemen, that he should give up a material part of his defence to an accusation, which might affect his fortune, fame, and liberty while living, as well as his memory, and the happiness of his posterity after his death, lest the consequence of that defence might not be to the honor of their memory. The foppery of gallantry in that part of the pamphlet which treats of the ladies' conduct to the prisoner, would be ill adopted by a judge pleading for every thing that is dear. No reflection was flung out against the ladies: if their conduct was improper, it is not to be ascribed to them, but to those who used or suffered their names to be used for the purposes of faction. The probability is, that the ladies were strangers to the messages sent in their names. Had General Clavering been, as the

the pamphleteer ſays he was, "particularly fearful of the imputation of ſupporting or encouraging the accuſer of Mr. Haſtings," he would himſelf have refrained from the viſit which he made to Nundcomar whilſt under accuſation, and would not have permitted his ſecretaries and aid-de-camps to attend him in gaol.

No man has a right to call Sir Elijah Impey's veracity in queſtion, becauſe a member of the Houſe of Commons has thought fit to prefer articles againſt him. Before ſuch an accuſation, ſurely, ſome ground ſhould have been laid for it. Such an attack was ſeparable from the defence ſet up. Had Sir Elijah given public reaſons for a proceeding on record, which he afterwards diſavowed to be his true reaſons, and had attributed his conduct to any other private motive, he would have no right to complain that the truth of any of his aſſertions ſhould be publickly denied: till that or ſome other juſt cauſe of ſuſpicion be aſcertained, he will do right to treat the attack and the attacker with the ſilent ſcorn they merit.

Mr. Francis is ſuppoſed to have profeſſed a neutrality during the proſecution of Sir Elijah Impey. That he has profeſſed this, is not doubted; but that he has not kept it, has been viſible to thoſe who have attended to his behaviour while it has been proceeding.

Sir Elijah may poſſibly have no reaſon to wiſh that he had preſerved his neutrality. He is moſt probably under no apprehenſions of him as an informer, for his fund of intelligence muſt have been long ago exhauſted. The zeal and activity of a profeſſed enemy ſatiating his vengeance as a proſecutor, ever acts on a generous people in favour of the party proſecuted. This Mr. Francis has already experienced. In neither of theſe characters can he be dreaded.

Mr. Francis, who muſt be acquainted with the temper of his own heart, has more than once declared, that, on account of his diſpoſition to Sir Elijah Impey, "he never would ſit in judgment on him, nor ever give a judicial vote in any cauſe in which Sir Elijah might be a party, unleſs he could ſafely give it for him." Paſſions do not argue logically or make metaphyſical diſtinctions; they do not diſtinguiſh accurately the caſes that are favourable or unfavourable to thoſe againſt whom they have been excited. After that declaration, notwithſtanding the qualification annexed to it, he is moſt certainly to be dreaded by Sir Elijah Impey, ſhould he ever become his judge. There is another character, in which he may, for the ſame reaſon, be feared, that of a witneſs. If neither of theſe characters be aſſumed, his friendſhip or enmity muſt be matter of indifference.

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It is not Sir Elijah Impey who has marked him as an enemy; he has by his public declarations marked himſelf as the enemy of Sir Elijah, who only gives credit to thoſe declarations, in aſſerting that he is ſo. From the picture of his own heart, delineated by the pencil of Mr. Francis himſelf, when he made them, Sir Elijah Impey's muſt be deformed indeed, if it does not appear to advantage, when placed, as Mr. Francis deſires it ſhould be, in oppoſition to his. Let Mr. Francis really deſiſt from aſſuming the character of a judge, or a witneſs, and there is no reaſon that Sir Elijah Impey ſhould not treat his "eternal hoſtility" with everlaſting contempt.

POSTSCRIPT.

SHOULD Mr. Francis aſſume the character of a witneſs, whether he be a *volunteer* or no muſt be left to the feelings of mankind: his ſituation with the proſecutor can leave no doubt, that if he be diſinclined to be examined, he will not be called: ſhould he *in any circumſtances* go beyond what he calls his *defence*, as far as *they* extend at leaſt, he *muſt* be a volunteer. It may be predicted, without extraordinary foreſight, that, in the caſe of his becoming a witneſs, he will not ſtrictly adhere to that qualification which he has annexed to the caſe of his becoming a judge, or giving a judicial vote in any cauſe reſpecting Sir Elijah Impey, viz. "except he can ſafely do it in his favor." The per-

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ſon who gives teſtimony, which he profeſſes to be in the nature of a defence, ought to be ſure that he cannot be prejudiced by ſelf-intereſt or enmity. Putting what he calls his defence into writing, and challenging Sir Elijah to do the ſame with the charge, may appear magnanimous; but it is, in fact, merely a flimſy art to captivate the public and enſnare Sir Elijah. Sir Elijah Impey has made no charge againſt him; he mentions acts done by Mr. Francis only to juſtify himſelf: there is no charge againſt Mr. Francis but what *he* pleaſes ſo to interpret; he ſtands *ſelf-accuſed.* There are articles formally exhibited againſt Sir. Elijah. In what cauſe, before whom, and to inflict what puniſhment can that which Mr. Francis writes be tortured into evidence againſt *himſelf?*

May it not be his object to procure ſomething under the hand of Sir Elijah, which by gloſſes and conſtructions may be turned againſt him? Why elſe that anxiety to get his defence delivered in at the bar of the Houſe? Why thoſe obſervations to prejudice him for not doing it? Why ſhould that which was done by the deſire of Mr. Haſtings, be uſed as a compulſory precedent for the conduct of Sir Elijah? He was heard by *himſelf*; he might have been heard by his counſel: was it ever thought juſt, that inſtructions given to counſel ſhould be called for, to be uſed as evidence againſt the party defended? If they were called for, could any ſtrictures be with juſtice made to the prejudice of his client for not delivering them? What difference is there whether the materials were in the hands of Sir Elijah or his counſel? The *evidence* he was ready to produce.

F I N I S.

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